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17 November 2014

Tax insights
G20 Brisbane and BEPS: Where to from here?

Snapshot

- In the lead-up to the recent G20 meeting in Brisbane, there were some interesting perspectives from large institutional investors business and governments.

- Key tax matters from the G20 Brisbane Communiqué include:
  - Commitment to the BEPS initiative and finalisation in 2015
  - a focus on patent boxes;
  - tax transparency initiatives relating to taxpayer specific rulings that are harmful tax practices; and
  - automatic exchange of information.
- We outline below what is in store from the BEPS initiative for the rest of 2014.

G20 Lead-up

The G20 meeting in Brisbane provided few new insights on the OECD's BEPS initiative, however the "positioning" of business groups and governments prior to the meeting provided a number of interesting developments.

The BEPS initiative, despite being almost a year from completion, is having a direct impact on the behaviour of investors, multinationals, governments and tax administrators worldwide.

Investor groups endorse the BEPS initiative

A 12 November 2014 press release by a group of influential investors[1] illustrates that the OECD's BEPS initiative is getting traction in the wider marketplace.

In the lead up to the G20 summit in Brisbane, the statement provides some indications as to the thinking of a number of large fund managers:

> *"Financial secrecy, opaque accounts and aggressive tax practices do not best meet our underlying objectives as inter-generational investors aiming for sustainable value creation."*

Of particular note are the calls for multinationals to address BEPS issues to satisfy the governance concerns of these large investors:

> *"In addition, we call on transnational corporations to recognise that **many existing financial practices around secrecy and taxation are not sustainable and no longer meet institutional investor governance expectations** nor reflect growing civil society views of responsible, transparent corporate behaviour within a licence to operate."(emphasis added)*

"...many existing financial practices around secrecy and taxation are not sustainable and no longer meet institutional investor governance expectations..."

Changing views of business on BEPS

The tenor of the comments above was echoed by Wesfarmers CEO Richard Goyder on 13 November 2014:

> *"One of our values is that we expect to pay tax in the countries where we earn income, and we expect to do that because we want those places to be better places. We want infrastructure to be good for us, we want the societies to be going OK or even better than OK. So we expect to pay tax"* [2]

Mr Goyder chairs the Business 20 group of global corporate CEOs helping to shape the G20 agenda, and the timing and nature of his comments are some of the strongest indicators yet of the emerging views of business leaders on these issues.

Germany and UK agree on patent box rules

The British and German governments have come to a compromise in relation to the UK patent box regime which had threatened to create significant tension at the G20 meeting in Brisbane.

The UK Treasury had previously defended the UK patent box regime and expressed their concerns with the proposed recommendation of the OECD BEPS Action 5 report on countering harmful tax practices and the so-called "nexus approach". The UK had argued the approach was impractical and contrary to EU law.

The compromise reached will seek to limit the benefits of the UK patent box regime to situations where the associated R&D activities are carried out in the UK. To lessen the impact of this approach the UK will introduce grandfathering rules for some existing arrangements.

The revised approach, while remaining somewhat different to the nexus approach recommended by

1. *Local Authority Pension Fund Forum (LAPFF), Batirente, Royal London Asset Management (RLAM), OFI Asset Management & Triodos Investment Management*

2. Source: 13 November 2014, *Australian Financial Review: Wesfarmers CEO Richard Goyder dislikes 'exotic' tax structures*, Ben Potter

the OECD, seems to better aligns the UK with the views of much of the rest of the world on tax regimes associated with intellectual property.

Irish developments

In the recent Irish Budget, the Irish Finance Minister announced Ireland's intention to abolish the so-called "Double Irish" structure. The associated tax advantages of the structure had been used by several large multinational groups and had attracted widespread criticism. He also expressed the Government's commitment to the BEPS initiative.

However, in the same Budget, the Minister set out Ireland's intention to institute a "Knowledge Development Box" regime along similar lines to the patent boxes which are considered in the BEPS action item addressing harmful tax practices.

It is somewhat difficult to reconcile these positions, although the accompanying tax strategy document to the Budget papers appear to justify this approach by referencing the need for Ireland's tax system to remain competitive in the face of growing global competition for mobile capital.

Australian perspective on tax competition

The Australian Treasurer raised concerns regarding tax competition in a 14 November 2014 interview:

> *"… sometimes there is a temptation for other economies to set up initiatives – even big economies – to set up initiatives that compete with some of the tax havens. That is unacceptable – that is unacceptable, because then it's a race to the bottom."* [3]

Country-by-country information to remain private

Whilst in Australia for the G20 meeting, the head of the OECD's BEPS initiative, Pascal Saint-Amans has rejected the calls for the tax information of multinationals to be released publicly.

Discussing the BEPS country-by-country reporting initiative Mr Saint-Amans said:

"We want country-by-country reporting but [information collected] will remain with tax administrations."

> *"Making [country-by-country reporting] public would make it extremely more difficult to be agreed to. For the potential benefit of NGOs to know this you may deprive tax administrations of all this information. We want country-by-country reporting but [information collected] will remain with tax administrations."* [4]

G20 Communiqué

Some of the tax related matters covered in the G20 Brisbane Communiqué are set out below:

- "We are taking actions to ensure the **fairness** of the international tax system and to **secure countries' revenue bases**
- Profits should be taxed where **economic activities** deriving the profits are performed and where **value** is created.
- We welcome the **significant progress** on the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan to **modernise international tax rule**s
- We are **committed to finalising** this work in 2015, including **transparency of taxpayer-specific rulings** found to constitute harmful tax practices.
- We welcome **progress** being made on taxation of **patent boxes**.
- To prevent cross-border tax evasion, we endorse the global Common Reporting Standard for the **automatic exchange of tax information** (AEOI) on a reciprocal basis. We will begin to exchange information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures.
- We welcome further **collaboration by our tax authorities** on cross-border compliance activities."

3. Source: 14 November 2014, *AM, ABC Radio, Brisbane*, *Interview with Chris Uhlman and The Hon Joe Hockey MP*

4. Source: 14 November 2014, *Sydney Morning Herald: Multinational tax details to be kept secret*, Nassim Khadem

In a separate statement, the Treasurer, Mr Hockey also stated in respect of **implementation**:

> *"It has been a remarkable year with a strong sense of cooperation and goodwill amongst the membership…While we have worked hard this year, we must maintain our momentum – we have to continue to implement what we have agreed. Turkey has identified next year as a year of deeds."* [5]

Future BEPS announcements – a busy end to 2014

The continued adherence to what is a very challenging timetable means that several important BEPS announcements are still to be delivered in 2014.

Some of the big tickets items that are expected in the remainder of 2014 are set out below.

Action 1:	VAT B2C Guidelines
Action 4:	Interest deductions
Action 6:	Treaty Abuse
Action 8-10:	Risk, characterisation Commodity transactions Profit splits
Action 14:	Dispute resolution

The proposed discussion draft on interest deductions will be of particular interest to many multinationals. In particular, the draft Action 1 deliverable discussed the possibility of introducing a formulary cap on interest deductions relative to external debt levels, an approach which has the potential to impact many existing financing arrangements.

Finally, the OECD intends to conduct a further webcast before year end to update on the progress of all BEPS matters.

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5. Source: 15 November 2014, *Statement – G20 Finance Ministers meeting, Brisbane The Hon Joe Hockey MP*

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